

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

STEVEN DOUGLAS SHUCK, II,

Petitioner,

v.

//

CIVIL ACTION NO. 1:11CV00109

CIRCUIT COURT OF MINERAL COUNTY, WV,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 19, 2011, pro se petitioner, Steven Douglas Shuck, II ("Shuck"), filed a petition pursuant to 28 U.S.C. § 2254. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation Procedure 2. On August 4, 2011, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R") recommending that Shuck's § 2254 petition be dismissed without prejudice for failure to exhaust state judicial remedies (dkt. no. 11).

On August 18, 2011, Shuck filed motions seeking the appointment of counsel and an extension of time to file objections (dkt. nos. 13, 14). The Court extended the deadline for objections to October 14, 2011 and denied the motion to appoint counsel (dkt. nos. 15, 17). To date, the only objections filed were attached as an exhibit to Shuck's August 18, 2011 motion to continue (dkt. no 13-1).* Shuck raises three objections: (1) that he has written to

*The failure to file specific objections to the Report and Recommendation within the extended time period not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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his attorney about filing a state appeal but has not received a response; (2) that the indictment was not read to him; and (3) that he has the right to due process.

After reviewing the record and conducting a de novo review of the matters before the Magistrate Judge, the Court **FINDS** that Shuck's objections are without merit. As noted by Judge Kaull, a federal court may only consider the issues the petitioner presented to the state court, Picard v. Connor, 404 U.S. 270 (1971), and Shuck has not yet filed a direct appeal or state habeas corpus petition. As Shuck has failed to exhaust his state judicial remedies, the Court **ADOPTS** the Report and Recommendation in its entirety, **DISMISSES** the petition (dkt. no. 1), and **ORDERS** the case **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: October 21 2011

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE